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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FragranceNet.com, Inc., Plaintiff, - against - FragranceX.com Inc. and John Does 1-20 Defendant.	CV 06 2225 (JFB) (AKT) **SECOND AMENDED COMPLAINT**

Plaintiff FragranceNet.com, Inc. ("FragranceNet.com" or "Plaintiff"), by and through its attorneys Paul, Hastings, Janofsky & Walker LLP, as and for its Second Amended Complaint against defendants FragranceX.com ("FragranceX.com") and John Does 1-20 (collectively, "Defendants") alleges as follows, upon actual knowledge with respect to itself and its own acts and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is an action to recover for the damage caused by, and to prevent further damage arising from, Defendants' infringement of FragranceNet.com's copyrights in and to more than nine hundred (900) photographs. Plaintiff FragranceNet.com owns and operates an on-line retail store that sells perfumery and related products. This action arises out of FragranceX.com's taking, misappropriating and copying of more than nine hundred (900)

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photographs from FragranceNet.com's site (the "Photographs") and, without permission or compensation to FragranceNet.com, using copies of them on the site of its competing on-line retail store, www.fragrancex.com. FragranceX.com has generated substantial revenue as a result of the use of the Photographs on its site, to FragranceNet.com's great and irreparable harm.

2. On information and belief, defendant FragranceX.com also has provided the Photographs to others for use in connection with the sale or distribution of perfumery and related products. The identities of those entities currently are unknown, and are listed as defendants John Does 1-20 herein. On discovery of the true identities of John Does 1-20, plaintiff intends to amend this complaint to list them as parties. On information and belief, FragranceX.com and John Does 1-20 have generated substantial revenue as a result of their use of the Photographs, to FragranceNet.com's great and irreparable harm.

3. FragranceNet.com seeks preliminary and permanent injunctive relief and compensatory and punitive damages based on Defendants' copyright infringement and FragranceX.com's contributory infringement.

4. This action arises under the copyright laws of the United States, 17 U.S.C. § 101 *et seq*.

PARTIES

5. FragranceNet.com is a Delaware corporation having its principal place of business at 104 Parkway Drive South, Hauppauge, NY 11788.

6. On information and belief, defendant FragranceX.com is a New York corporation having a business address of 49-09 5th Street, Long Island City, NY 11101.

7. On information and belief, defendants John Does 1-20 are entities or individuals associated or affiliated with defendant FragranceX.com and which, or who, participated in the wrongful acts and infringement alleged herein.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

9. This Court has personal jurisdiction over FragranceX.com because it resides in this district and because Defendants' tortious conduct takes place and causes FragranceNet.com injury in this state and district.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

11. FragranceNet.com is in the business of selling perfumery and related goods via its on-line retail store posted at www.fragrancenet.com. That site has been in operation since June 1997, and, by virtue of FragranceNet.com's efforts and expenditures, has become one of the most successful on-line perfume stores in the United States.

12. FragranceNet.com has expended significant time, effort and money to develop its on-line retail store.

13. In developing its business, FragranceNet.com has created hundreds of photographs of the products it offers for sale, including the Photographs. The background, arrangement, lighting, use of shadow, angle and selection of products within each line to be included within the Photographs are among the original elements contributed by the Photographs.

14. FragranceNet.com is the author and copyright owner with respect to the Photographs, which are displayed on the www.fragrancenet.com site so that consumers may see what is offered for sale, and to reassure consumers that they are purchasing legitimate and high quality products.

15. FragranceNet.com registered its rights in and to the Photographs and obtained from the Register of Copyrights, Certificates of Copyright Registration Nos. VA 1-340-784, VA 1-340-783, VA 1-340-782, dated February 21, 2006. Copies of the foregoing registration certificates are annexed hereto as Exhibit A.

16. FragranceNet.com is, and at all relevant times has been, the owner of the copyrights in and to the Photographs.

17. At some time prior to August 1, 2005, FragranceX.com copied more than nine hundred (900) of the Photographs without the authorization of FragranceNet.com and posted them on its competing on-line fragrance store, www.fragranceX.com. Annexed hereto as Exhibit B are representative examples of the Photographs, each followed by a screenshot from Defendant's www.fragranceX.com site showing FragranceX.com's infringing copy of the Photograph. Annexed hereto as Exhibit C is a list of the infringing photographs, by brand and by the gender for which the product is intended. On information and belief, FragranceX.com posts only one photo per product on the Web site of its on-line fragrance store.

18. On August 1, 2005, FragranceNet.com formally notified FragranceX.com that it infringed FragranceNet.com's rights and demanded that FragranceX.com cease and desist from all further infringement. FragranceX.com has failed and refused to do so.

19. On November 21, 2005, FragranceX.com advised FragranceNet.com that, regardless of whether FragranceNet.com brought an action against it for copyright infringement,

FragranceX.com intended to complete a full-scale revision of its Web site by April 1, 2006. FragranceX.com has not done so.

20. For months FragranceNet.com attempted to resolve the matter, but to no avail. When FragranceNet.com realized that its efforts were futile, it commenced this action.

21. FragranceNet.com has no adequate remedy at law.

COUNT I
(Copyright Infringement)

22. FragranceNet.com repeats and realleges the allegations contained in paragraphs 1-21 of the Complaint as if fully set forth herein.

23. The actions of Defendants, as undertaken and continued to date, infringe FragranceNet.com's exclusive rights, *inter alia*, to reproduce and distribute the Photographs, all in violation of FragranceNet.com's exclusive copyrights under 17 U.S.C. §§ 104(a) and 106. Such acts constitute copyright infringement under 17 U.S.C. § 501.

24. Defendants' unlawful acts set forth above also constitute willful copyright infringement.

25. FragranceX.com's unlawful acts set forth above constitute contributory copyright infringement.

26. The actions of Defendants complained of herein have caused, are causing and, unless enjoined by the Court, will continue to cause irreparable harm, damage and injury to FragranceNet.com.

27. The actions of Defendants complained of herein have damaged, are damaging and will continue to damage FragranceNet.com in an amount to be determined at trial.

Demand For Relief

WHEREFORE, FragranceNet.com respectfully prays for judgment to be entered against Defendants:

a. preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees and attorneys, and those persons acting in concert with them from further violating 17 U.S.C. §101 *et seq.* and inducing, contributing to, causing, engaging or authorizing any individual or entity to perform any of the aforementioned acts;

b. directing Defendants to account to FragranceNet.com for any and all gains, profits and advantages derived from Defendants' wrongful acts complained of;

c. directing each Defendant to file with the Court and serve upon counsel for FragranceNet.com within thirty (30) days after entry of any preliminary or permanent injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. §1116 setting forth in detail the manner and form in which it has complied with the injunction;

d. awarding damages to FragranceNet.com against Defendants, according to proof at trial;

e. awarding FragranceNet.com punitive damages in an amount to be determined at trial;

f. awarding FragranceNet.com its costs pursuant to 17 U.S.C. § 505; and

g. Granting such other and further relief as the Court deems just and proper.

Dated: July 27, 2006

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: ______________________

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SECOND AMENDED COMPLAINT was served on attorneys for FragranceX.com, Inc. on July 27, 2006, by delivering a true and correct copy of same by e-mail and First Class Mail to:

David Rabinowitz, Esq.
Moses & Singer LLP
The Chrysler Building
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